

June 6, 1996

Guidance Memoranda and Policies (GMP) #81

To: District Directors
District Environmental Health Managers
Office of Environmental Health Services

From: Randolph L. Gordon, M.D., M.P.H.
Health Commissioner

Subject: Variances from § 3.12.C.2 of the *Alternative Discharging Sewage Treatment Regulations for Single Family Dwellings*
Discharge - Maintenance Contract - Variance

BACKGROUND

Under § 3.12 of the *Alternative Discharging Sewage Treatment Regulations for Single Family Dwellings* (Discharge Regulations) a person who holds a discharge permit must have a contract with a qualified individual for routine maintenance and repair of the discharge system. Section 3.12.C.2 requires the contract provider to provide “full and complete repairs to the system within 48 hours of notification that repairs are needed.” It also states that “any deductible provision in a maintenance agreement shall not exceed \$500.00 in any given year for repairs (including parts and labor).”

Many permit holders throughout the Commonwealth have experienced great difficulty obtaining maintenance contracts that meet the requirements of § 3.12.C.2. Maintenance and monitoring contract providers are reluctant to agree to “full and complete repairs” with the \$500.00 deductible provision, particularly for older systems, because of the financial risk involved. Many providers refuse to limit deductibles to \$500.00 because the systems were installed by others, and the contracts essentially amount to warranties. Providers that do provide contracts that fully comply with § 3.12.C.2 do so at a cost that is prohibitive to many homeowners.

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Section 2.7 of the Discharge Regulations states that a variance may be granted if a thorough investigation reveals that the hardship (which may be economic) imposed by the regulations outweighs the benefits that may be received by the public and if granting the variance does not subject the public to unreasonable health risks. Variances to § 3.12.C.2 have been routinely granted upon a finding that the hardship imposed outweighs the benefits of the regulation and that, with certain conditions, granting the variance will not adversely affect public health or ground and surface water resources.

PURPOSE

The purpose of this policy is to streamline the processing of requests for variances from § 3.12.C.2 of the Discharge Regulations. These variances are to be processed in the local or district health departments within the guidelines of this policy.

The authority to complete the documentation necessary for granting variances under this procedure is limited to cases involving only § 3.12.C.2 of the Discharge Regulations. All other requirements of the Discharge Regulations must be met without exception. In cases where the minimum requirements established in this procedure cannot be met, the owner must submit a request for a variance which will be reviewed by the District and sent to the Commissioner with a recommendation for action in the usual manner.

PROCEDURE

Effective immediately, all holders of (and future applicants for) operation and construction permits shall receive a variance from § 3.12.C.2, and no local or district health department may require any permit holder to comply with the provisions of § 3.12.C.2. If a permit holder wishes to comply with the Discharge Regulations by executing a contract with a provider that meets the requirements of § 3.12.C.2, the health department will honor that wish, but such compliance shall be entirely voluntary. All variances granted under this policy shall be effective through June 30, 2001, which is the expiration date of the General Permit.

No action is required from the owner or applicant to apply for or receive a variance from § 3.12.C.2. The Senior Environmental Health Specialist responsible for a given permit or application will attach a copy of the pre-signed variance (attached to this memorandum) to each construction and operation permit and will be responsible for ensuring that the owner or applicant receives a copy of the variance. It is **not necessary** to send a copy of the signed permit and attached variance to the Division of Onsite Sewage and Water Services.

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All other provisions of §§ 3.11 and 3.12 will apply. All permit holders must comply with the monitoring requirements of § 3.11 and must have a contract with a qualified maintenance provider as defined in § 3.12.E. The maintenance contract provider is required to make periodic inspections of the system in accordance with the frequencies and schedules contained in §3.11, *whether or not that person performs the required monitoring of the system*, and to advise the owner in accordance with the conditions of this variance whenever repairs and maintenance are required. The owner of the system is responsible for all repairs and maintenance recommended by the contract provider, which may be accomplished by any qualified individual.

For example, the contract provider may inform the owner that replacement of the aerator is necessary. This replacement may be accomplished by the maintenance contract provider under terms negotiated outside the requirements of the Discharge Regulations (independent of 3.12.C.2), or the replacement may be accomplished by any other person (electrician, wastewater operator, etc.). In another example, the contract provider may inform the owner that wiring to the electrical controls is faulty. The rewiring may be accomplished by any individual who is properly licensed and qualified to perform that work.

Any owner who refuses to accept the conditions of this variance must either comply with the requirements of § 3.12.C.2, apply for a separate variance pursuant to § 2.7, or may appeal the conditions of the variance in accordance with §§ 2.7.D.3 and 2.7.F within 30 days of the effective date of the variance which shall be the date of issuance of the operation permit.

VARIANCE

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This is a variance from § 3.12.C.2 of the *Alternative Discharging Sewage Treatment Regulations for Single Family Dwellings* (VR 355-34-400, 12 VAC 5-640, the “Discharge Regulations”), issued pursuant to section 2.7 of the Discharge Regulations. Section 3.12 of the Discharge Regulations requires a contract between the owner and a qualified person to assure that maintenance is performed in a timely manner. Section 3.12.C.2 specifies that the contract must provide for “full and complete repairs to the system within 48 hours of notification that repairs are needed” and that “any deductible provision in a maintenance agreement shall not exceed \$500 in any given year for repairs (including parts and labor).”

This variance allows the owner, under the conditions set forth below, to satisfy the requirements of § 3.12 by completing a maintenance contract with a qualified person (see § 3.12.E) which is not subject to the requirements § 3.12.C.2. All other minimum requirements of the Discharge Regulations, including other requirements regarding monitoring and maintenance contracts, must be met.

This variance is granted with the following conditions:

1. The owner is responsible for prompt maintenance and repair of the discharging system *including all costs* associated with the maintenance or repair.
2. Immediately upon receipt of notice that repair or maintenance is required, the owner shall begin emergency pump and haul of all sewage generated in the dwelling if full and complete repairs cannot be accomplished within forty eight (48) hours and *if the local health department determines that pumping and hauling is necessary to protect public health and the environment.*
3. The maintenance contract must provide for periodic inspections of the discharging system at the minimum frequencies and schedules contained in § 3.11, *whether or not the maintenance contract provider performs the required monitoring of the system.* Whenever the contract provider becomes aware that maintenance or repair is necessary, that person must deliver written notice detailing the problems and needed corrections to the owner within 24 hours and provide a copy to the appropriate local health department.

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4. The maintenance contract must specify that the provider will maintain a log of the following items and make this log available upon request to the local health department:

- a. Results of all tests and sampling;
- b. Alarm activation incidents;
- c. Maintenance, corrective, or repair activities performed;
- d. Recommended repair or replacement items;
- e. Copies of all reports prepared by the contract provider.

5. The maintenance contract must specify that the provider will inspect the discharging system within 48 hours after notification by the owner or the local health department that a problem may be occurring.

This variance is granted to the owner of the discharging system described in the attached permit and is effective upon the date of the operation permit for the discharging system. This variance is not transferrable to another property owner, sewage disposal system or property. This variance shall remain in effect until June 30, 2001, as long as an operation permit for the system is in effect.

If the owner wishes to challenge the terms of this variance, a written request for a hearing must be received in the office of the State Health Commissioner within 30 days of the effective date of this variance.

Randolph L. Gordon, M.D., M.P.H.
State Health Commissioner